

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DONNA CURLING, *et al.*

Plaintiffs,

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants.

CIVIL ACTION

FILE NO. 1:17-cv-2989-AT

**STATE DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY
RELATED TO PLAINTIFFS' MOTIONS FOR PRELIMINARY
INJUNCTION**

Defendants Secretary of State Brad Raffensperger, the State Election Board, and the State Election Board Members (collectively, “State Defendants”) submit this brief Notice of Supplemental Authority (“Notice”) to note the recent decisions by the United States Supreme Court staying multiple district courts’ preliminary injunctions related to election practices and procedures. As further explained, these cases demonstrate that this Court should deny Plaintiffs’ third set of Motions for Preliminary Injunction [Docs. 619, 640].

On June 15, 2020, the United States District Court for the Northern District of Alabama issued a preliminary injunction covering the forthcoming

primary runoff election set to occur on July 14, 2020. The preliminary injunction prohibited (1) the Alabama Secretary of State from interfering with “curbside voting” schemes devised by county election officials in the wake of the COVID-19 pandemic; and (2) local election officials from enforcing certain Alabama election laws related to absentee voting. *People First of Ala. v. Merrill*, 2020 U.S. Dist. LEXIS 104444, *87–90 (N.D. Ala., June 15, 2020).

The Defendants appealed and filed an emergency motion to stay the preliminary injunction pending the outcome of the appeal. *People First of Ala. v. Sec’y of State for Ala.*, 2020 U.S. App. LEXIS 19850, *10–11 (11th Cir. June 25, 2020) (Rosenbaum, concurring). The Eleventh Circuit did not reach the issue on the merits, instead denying the defendants’ emergency motion.

On July 2, 2020, the Supreme Court unanimously stayed the district court’s order “pending disposition of the appeal in the United States Court of Appeals for the Eleventh Circuit and disposition of the petition for a writ of certiorari, if such writ is timely sought.” *Merrill v. People First of Ala.*, 2020 U.S. LEXIS 3541, *1 (U.S., July 2, 2020). This unanimous decision to stay an underlying preliminary injunction tracks a consistent series of Supreme Court decisions requiring district courts to proceed circumspectly when ordering preliminary injunctive relief in close proximity to elections: “This

Court has repeatedly emphasized that lower federal courts should not alter the election rules on the eve of an election.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020), citing *Purcell v. Gonzalez*, 549 U. S. 1 (2006) (per curiam).

The U.S. Supreme Court also recently stayed a district-court order making significant changes to election processes for November related to ballot initiatives, with the Chief Justice noting the need for “clear and administrable guidelines from the courts.” *Little v. Reclaim Idaho*, No. 20A18, 2020 U.S. LEXIS 3585, at *2 (U.S. July 30, 2020). *Accord Republican Nat’l Comm.*, 140 S. Ct. at 1207; *Purcell*, 549 U. S. 1; *Frank v. Walker*, 574 U.S. 929 (2014); *Veasey v. Perry*, 574 U.S. 951 (2014); *Tex. Democratic Party v. Abbott*, 140 S. Ct. 2015 (2020); *Thompson v. DeWine*, No. 19A1054, 2020 U.S. LEXIS 3376, at *1 (U.S. June 25, 2020).

CONCLUSION

In light of recent Supreme Court authority cautioning against court-ordered changes to election processes, particularly when Plaintiffs’ proposed changes involve significant modifications to the election system and would occur on the eve of the election itself, this Court should deny the Plaintiffs’ respective preliminary injunction motions.

Respectfully submitted this 6th day of August, 2020.

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing **STATE DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY RELATED TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ Bryan P. Tyson
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